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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/756,897

01/14/2004

James O. Gilkerson

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3622

21186

7590

02/27/2009

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EXAMINER

GETZOW, SCOTT M

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

02/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<i>Office Action Summary</i>	Application No.	Applicant(s)	
	10/756,897	GILKERSON ET AL.	
	Examiner	Art Unit	
	Scott M. Getzow	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2008.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 6-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,6-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

*Claim Rejections - 35 USC § 103*

1. Claims 1,2,8,11-15,17-19,22,23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Struble et al (6,122,545) in view of either Haefner et al (6,169,918) *or* Markowitz (4,343,311).

As mentioned in the previous office action, Struble teaches programmable blanking periods, see column 26 for example. Haefner, at the bottom of column 2, teaches what is old and well known in the art, namely that the occurrence of a sensed ventricular depolarization triggers a time period referred to as the blanking period. To start the cross chamber blanking period following the sensing of a ventricular depolarization, as taught by Haefner, would have been obvious to use with the device of Struble since the substitution of features would produce a predictable result in the combination. That is, instead of starting the atrial blanking period of Struble at the start of a ventricular pace, it would be obvious to start it at a ventricular sense, as taught by Haefner. Further, the patent to Markowitz also teaches starting the blanking period at the moment of a ventricular sense. It also would have been obvious to use the sensing of the ventricular depolarization to start the atrial blanking period, rather than at a ventricular pace as taught in Struble, since the combination would also yield a predictable result. Also, to stop sensing in the atrium following a 'last' ventricle beat is considered to be capable of being done by the structure of the above devices.

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2. Claims 6,7,10,16,20,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Struble et al (6,122,545) in view of either Haefner et al (6,169,918) *or* Markowitz (4,343,311), and further in view of Wickham (5,891,171).

To use the feature of computing a noise window width, as taught by Wickham, would have been obvious for reasons mentioned in the office action of 6/15/06.

3. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Struble et al (6,122,545) in view of either Haefner et al (6,169,918) *or* Markowitz (4,343,311), And further in view of Van Lake (5,653,737).

See office action of 6/15/06.

4. Claims 1,2,8,11-15,17-19,22,23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz (4,343,311) in view of Routh et al (5,735,881).

Markowitz teaches a device which blanks the atrial sense amplifier upon the sensing of a ventricular event. Although embodied in a pacemaker, to have the pacing capabilities of Markowitz in a device which also has cardioverting/defibrillating capabilities is considered to be obvious in that combined pacing/cardioverting is common in the art.

The blanking period of Markowitz is considered to be fixed at 170 ms from the time of the ventricular sense. Routh teaches a device where the blanking period is programmable. To have a programmable blanking period with the device of Markowitz would have been obvious in that such would simply be the combination of known prior

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art elements combined to yield a predictable result. Further, programmability would allow for more flexibility in the device of Markowitz.

5. Claims 6,7,10,16,20,21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz (4,343,311) in view of Routh et al (5,735,881), and further in view of Wickham (5,891,171).

It would have been obvious to use the teachings of Wickham for reasons mentioned supra.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Markowitz (4,343,311) in view of Routh et al (5,735,881), and further in view of Van Lake (5,653,737).

It would have been obvious to use the teachings of Van Lake for reasons mentioned supra.

### *Double Patenting*

7. Claims 1,2,6-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,687,539 in view of Haefner et al (6,169,918) *or* Markowitz (4,343,311). Although the conflicting claims are not identical, they are not patentably distinct from each other because at least one claim of the present application is considered to be an obvious variant of at

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least one claim of the parent patent. For example, the subject matter of claim 1 of the present application calls for essentially the same subject matter of patent claim 1 except for the mention of blanking atrial signals following a last sensed ventricle beat. As mentioned supra, the patents to Haefner and Markowitz both teach starting a blanking period from a ventricular sense.

8. Claims 1,2,6-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6,304,778 in view of Haefner et al (6,169,918) or Markowitz (4,343,311). Although the conflicting claims are not identical, they are not patentably distinct from each other because at least one claim of the present application is considered to be an obvious variant of at least one claim of the parent patent. For example, the subject matter of claim 1 of the present application calls for essentially the same subject matter of patent claim 1 except for the mention of blanking atrial signals following a last sensed ventricle beat. As mentioned supra, the patents to Haefner and Markowitz both teach starting a blanking period from a ventricular sense.

Since new rejections have been made, this action is not made final. Re the double patenting rejections, the patents to Struble, Markowitz and Haefner are all considered to be available 'prior art'. There is nothing in the MPEP that limits the use of prior art in an obviousness type double patenting rejection. The only restriction is that only the claims

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of the commonly owned patents are considered to be prior art, and not the whole disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (571) 272-4946. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott M. Getzow/  
Primary Examiner, Art Unit 3762